CHAPTER 11
SEPARATIONS, DISCIPLINARY ACTIONS AND REDUCTION IN FORCE

[Prior to 11/5/86, Merit Employment Department[570]]
[Prior to 1986, see Executive Council[420]Ch 10]

581—11.1(19A) Separations.

11.1(1) *Resignation, retirement, phased retirement, early retirement, or early termination.*

a. To resign or retire in good standing an employee must give the appointing authority at least 14 calendar days' prior notice unless the appointing authority agrees to a shorter period. A written notice of resignation or retirement shall be given by the employee to the appointing authority, with a copy forwarded to the director by the appointing authority at the same time. An employee who fails to give this prior notice may, at the request of the appointing authority, be barred from certification or appointment to that agency for a period of up to two years. Resignation or retirement shall not be subject to appeal under 581—Chapter 12 unless it is alleged that it was submitted under duress.

Employees who are absent from duty for three consecutive workdays without proper authorization from the appointing authority may be considered to have voluntarily terminated employment. The appointing authority shall notify the employee by registered letter (return receipt requested) that they must return to work within two workdays following receipt of the notification or be removed from the payroll. If the appointing authority receives notice from the U.S. post office that the letter was undeliverable, the employee may be removed from the payroll five days following receipt of that notice. The appointing authority shall consider requests to review circumstances.

b. A full-time employee who is at least 60 years of age and who has completed at least 20 years as a full-time employee may, with approval of the appointing authority, participate in the phased retirement program. The request for participation shall specify the number of hours per week the employee intends to work for each year of the program.

Participants shall be in pay status a maximum of 32 hours per week and a minimum of 20 hours per week during the first four years in the program. After the completion of four years in the program, participants shall be in pay status a maximum of 20 hours per week for the fifth year in the program. An employee may not increase the number of hours in pay status once participation in the program has begun. An employee may participate for a maximum of five years in the program. At the conclusion of the agreed upon period of participation in the program, the employee shall retire from state employment.

An employee participating in the phased retirement program shall receive holiday pay and accrue vacation and sick leave on a pro rata basis in accordance with the number of hours in pay status in the pay period. During the period of participation in the program, all other benefits shall be commensurate with full-time employment.

Participation in the phased retirement program shall serve as a written notice of intent to retire on the date specified in the agreement unless the employee retires, resigns, is discharged, or receives long-term disability prior to that date. Participants are eligible to elect early retirement or early termination incentives in lieu of completing the phased retirement agreement.

An employee who participates in the phased retirement program shall not be eligible to return to permanent employment for hours in excess of those worked at the time of retirement.

c. Employees who received early retirement or early termination incentives provided by 1986 Iowa Acts, Senate File 2242, shall not be eligible for further state employment.

d. Separation from employment for purposes of induction into military service shall be in accordance with 581—subrules 14.6(2) and 14.9(2).

e. A person who has served as a commissioner or board member of a regulatory agency shall not be eligible for employment with that agency until two years after termination of the appointment.

11.1(2) *Expiration of appointment.* When an employee is separated upon the expiration of an appointment of limited duration, the appointing authority shall immediately report the separation to the department on forms prescribed by the director.

11.1(3) *Early retirement incentive program—1992.*

a. This early retirement incentive program is provided for in 1992 Iowa Acts, House File 2454. To be eligible to participate in this program an employee must be at least 59 years of age at the time of termination, have a total of at least 20 years of continuous or noncontinuous membership service, including buy-back or buy-in service, in the Iowa Public Employees' Retirement System (IPERS) or the Public Safety Peace Officers' Retirement, Accident, and Disability System (POR), and be participating in one of the state's group health or dental insurance plans at the time of termination. Employees on the payroll who meet these criteria and who are receiving workers' compensation are also eligible to participate.

b. To be a program participant, employees must complete an early retirement incentive program application form and send it to IPERS or POR prior to November 15, 1992, and must terminate employment no sooner than May 15, 1992, and prior to January 15, 1993. The IPERS address is P.O. Box 9117, Des Moines, Iowa 50306. The POR address is Wallace State Office Building, Des Moines, Iowa 50319.

c. For participating employees, the state's share of the health insurance premium, or the state's share of the dental insurance premium, or both, will continue to be paid by the state. The amount of the state's share will be capped at the amount that was being paid upon termination. The balance of any premium amounts is to be paid by the participating employee. Prior to or after termination, participants may choose to move to a health insurance plan that has a less costly state's share. If the participant moves to a plan with a less costly state's share, the amount paid by the state will be capped at the state's share for the less costly plan. Thereafter, under no circumstances will a previously reduced or capped state's share rate be increased for any participant. The state's share will then continue at that capped rate through the last day of the month prior to the month in which the participating employee reaches age 65.

d. If a program participant dies before reaching age 65, the state's share of health insurance premium, or the state's share of the dental insurance premium, or both, will continue for the dependents who are listed on the employee's health insurance care contract, dental insurance care contract, or both, through the last day of the month prior to the month in which the program participant would have reached age 65. Dependents may then purchase a conversion policy. Contract status changes, i.e., family to single, may occur for the surviving spouse, if applicable.

e. If a program participant or the spouse of a program participant has an event that would change the contract status from family to single, this change will be allowed. In that case, the state's share of the premium will be reduced to and capped at the single plan rate at the time of the contract change. If a program participant has an event that would change the contract status from single to family, this change will be allowed. However, the state's share of the premium will continue at the capped single plan rate. Under no circumstances will a previously reduced or capped state's share rate be increased for any participant.

f. If a program participant has a double-spouse contribution contract at the time of termination, the double-spouse contribution will continue until the earlier of: the death of either spouse, the dissolution or legal separation of these spouses, the last day of the month prior to the month in which the program participant reaches age 65, or the date the remaining working spouse terminates employment.

g. Under no circumstances will a previously reduced or capped state's share rate ever be increased for any participant for any reason.

h. Employees who participate in this program are not eligible to accept any further employment with the state of Iowa. This prohibition does not apply to a program participant who is later elected to public office.

i. Any employee who participates in this early retirement program and who is later approved for state group disability benefits is exempt from further participation in this program. In addition, the state's share of insurance premiums already paid, from the time of termination until long-term disability payments begin, may be recouped by the state and returned to the department of management for repayment to the originating fund. However, any program participant's payment toward health insurance premiums during that period will be applied toward the employee's cost of the coverage.

581—11.2(19A) Disciplinary actions. Except as otherwise provided, in addition to less severe progressive discipline measures, any employee is subject to any of the following disciplinary actions when based on a standard of just cause: suspension, reduction of pay within the same pay grade, disciplinary demotion, or discharge. Disciplinary action involving employees covered by collective bargaining agreements shall be in accordance with the provisions of the agreement. Disciplinary action shall be based on any of the following reasons: inefficiency, insubordination, less than competent job performance, failure to perform assigned duties, inadequacy in the performance of assigned duties, dishonesty, improper use of leave, unrehabilitated substance abuse, negligence, conduct which adversely affects the employee's job performance or the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct, or any other just cause.

11.2(1) *Suspension.*

a. Suspension pending investigation. An appointing authority may suspend an employee for up to 21 calendar days with pay pending an investigation. If, upon investigation, it is determined that a suspension without pay was warranted as provided in 11.2(1)*"b"*(1) below for an employee covered by the premium overtime provisions of the Fair Labor Standards Act, the appointing authority shall recover the pay received by the employee for the imposed period of suspension without pay.

b. Disciplinary suspension. An appointing authority may suspend an employee for a length of time considered appropriate not to exceed 30 calendar days as provided in either subparagraph (1) or (2) below. A written statement of the reasons for the suspension and its duration shall be sent to the employee within 24 hours after the effective date of the action.

(1) Employees who are covered by the premium overtime provisions of the federal Fair Labor Standards Act may be suspended without pay.

(2) Employees who are exempt from the premium overtime provisions of the federal Fair Labor Standards Act will not be subject to suspension without pay except for infractions of safety rules of major significance, and then only after the appointing authority receives prior approval from the director. Otherwise, when a suspension is imposed on such an employee, it shall be with pay and shall carry the same weight as a suspension without pay for purposes of progressive discipline. The employee will perform work during a period of suspension with pay unless the appointing authority determines that safety, morale, or other considerations warrant that the employee not report to work.

11.2(2) *Reduction of pay within the same pay grade.* An appointing authority may reduce the pay of an employee who is covered by the overtime provisions of the federal Fair Labor Standards Act to a lower step or rate of pay within the same pay grade assigned to the employee's class for any number of pay periods considered appropriate. A written statement of the reasons for the reduction and its duration shall be sent to the employee within 24 hours after the effective date of the action, and a copy shall be sent to the director by the appointing authority at the same time.

Employees who are exempt from the overtime provisions of the federal Fair Labor Standards Act will not be subject to reductions of pay within the same pay grade except for infractions of safety rules of major significance, and then only after the appointing authority receives prior approval from the director.

11.2(3) *Disciplinary demotion.* A disciplinary demotion may be used to permanently move an employee to a lower job classification. A temporary disciplinary demotion shall not be used as a substitute for a suspension without pay or reduction in pay within the same pay grade. An employee re-

ceiving a disciplinary demotion shall only perform the duties and responsibilities consistent with the class to which demoted. An appointing authority may disciplinary demote an employee to a vacant position. In the absence of a vacant position, the appointing authority may effect the same disciplinary result by removing duties and responsibilities from the employee's position sufficient to cause it to be reclassified to a lower class. A written statement of the reasons for the disciplinary demotion shall be sent to the employee within 24 hours after the effective date of the action, and a copy shall be sent to the director by the appointing authority at the same time.

No disciplinary demotion shall be made from one position covered by merit system provisions to another, or from a position not covered by merit system provisions to one that is, until the employee is approved by the director as being eligible for appointment. Disciplinary demotion of an employee with probationary status to a position covered by merit system provisions shall be in accordance with 581—subrule 9.2(2).

An agency may not disciplinarily demote an employee from a position covered by merit system provisions to a position not covered by merit system provisions without the affected employee's written consent regarding the change in coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement provisions.

11.2(4) *Discharge.* An appointing authority may discharge an employee. Prior to the employee being discharged, the appointing authority shall inform the employee during a face-to-face meeting of the impending discharge and the reasons for the discharge, and at that time the employee shall have the opportunity to respond. A written statement of the reasons for the discharge shall be sent to the employee within 24 hours after the effective date of the discharge, and a copy shall be sent to the director by the appointing authority at the same time.

When an employee occupies a position where a current qualification for appointment is based upon the required possession of a temporary work permit or on the basis of possession of a license or certificate, and that document expires, is revoked or is otherwise determined to be invalid, the employee shall either be discharged for failure to meet or maintain license or certificate requirements, or otherwise appointed to another position in accordance with these rules. This action shall be effective no later than the pay period following the failure to obtain, revocation of, or expiration of the permit, license, or certificate.

When an employee occupies a position where a current qualification for appointment is based upon the requirement of an approved background or records investigation and that approval is later withdrawn or unobtainable, the employee shall be immediately discharged for failure to maintain those background or records requirements or may be appointed to another position in accordance with these rules.

11.2(5) Appeal of a suspension, reduction of pay within the same pay grade, disciplinary demotion or discharge shall be in accordance with 581—Chapter 12. The written statement to the employee of the reasons for the discipline shall include the verbatim content of 581—subrule 12.2(6).

581—11.3(19A) Reduction in force. A reduction in force (layoff) may be proposed by an appointing authority whenever there is a lack of funds, a lack of work or a reorganization. A reduction in force shall be required whenever the appointing authority reduces the number of permanent merit system covered employees in a class or the number of hours worked by permanent merit system covered employees in a class, except as provided in subrule 11.3(1).

11.3(1) The following agency actions shall not constitute a reduction in force nor require the application of these reduction in force rules:

a. An interruption of employment for no more than 20 consecutive calendar days, with the prior approval of the director.

b. Interruptions in the employment of school term employees during breaks in the academic year, during the summer, or during other seasonal interruptions that are a condition of employment, with the prior approval of the director.

c. The promotion or reclassification of an employee to a class in the same or a higher pay grade.

d. The reclassification of an employee's position to a class in a lower pay grade that results from the correction of a classification error, the implementation of a class or series revision, changes in the duties of the position, or a reorganization that does not result in fewer total positions in the unit that is reorganized.

e. When a change in the classification of an employee's position or the appointment of an employee to a vacant position in a class in a lower pay grade is the result of a disciplinary or voluntary demotion.

f. The transfer or reassignment of an employee to another position in the same class or to a class in the same pay grade.

g. A reduction in the number of, or hours worked by, permanent employees not covered by merit system provisions.

11.3(2) The agency's reduction in force shall conform to the following provisions:

a. Reduction in force shall be by class.

b. The reduction in force unit may be by agency organizational unit or agencywide. If the agency organizational unit is smaller than a bureau, it must first be reviewed by the director.

c. An agency shall not implement a reduction in force until it has first terminated all temporary employees in the same class in the reduction in force unit as well as those who have probationary status in the same class.

d. The appointing authority shall develop a plan for the reduction in force and shall submit that plan to the director for approval in advance of the effective date. The plan must be approved by the director before it can become effective. The plan shall include the reason(s) for and the effective date of the reduction in force, the reduction in force unit(s), the reason(s) for choosing the unit(s) if smaller than a bureau, the number of permanent merit system covered employees by class to be eliminated or reduced in hours, the cutoff date for the establishment of performance records, the selection criteria to be used, the weighted percentages to be assigned to performance records and to length of service, and any other information requested by the director. The appointing authority shall post each approved reduction in force plan for 60 calendar days in conspicuous places throughout the reduction in force unit. The posting shall include the names of all permanent merit system covered employees in each affected job class in the reduction in force unit.

e. The appointing authority shall notify each affected employee in writing of the reduction in force, the reason(s) for it, and the employee's rights under these rules. A copy of the employee's retention points computation worksheet shall be furnished to the employee. The official notifications to affected employees shall be made at least 20 workdays prior to the effective date of the reduction in force unless budgetary limitations require a lesser period of time. These official notifications shall occur only after the agency's reduction in force plan has been approved by the director, unless otherwise authorized by the director, and following the application of the selection criteria called for in 581—subrules 11.3(2), 11.3(3) and 11.3(4).

f. The appointing authority shall notify the affected employee(s), in writing, of any options or assignment changes during the various steps in the reduction in force process. In each instance the employee shall have five calendar days following the date of receipt of the notification in which to respond in writing to the appointing authority in order to exercise the rights provided for in this rule that are associated with the reduction in force.

11.3(3) *Retention points*. The reduction in force shall be in accordance with total retention points made up of a combination of points for length of service and points for performance record, giving primary consideration to the performance record. A cutoff date shall be set by the appointing authority beyond which no points shall be credited.

a. Length of service credit shall not include the following periods: Rescinded IAB 1/15/97, effective 2/19/97.

b. If performance evaluations are used in calculating the performance record, the following shall apply:

(1) A performance evaluation period rated as "less than competent" or "does not meet job expectations" or shall be an "overall sum of ratings" less than 3.00 shall receive no credit.

(2) Only performance evaluations that were due prior to the cutoff date may be used unless performance evaluations after the cutoff date are done on all employees affected by the layoff. Otherwise, the rating received on the last valid performance evaluation for the previous rating period shall be brought forward for the current period not evaluated.

c. The total retention points shall be the sum that results from adding together the total of the length of service points and the total of the performance record points.

11.3(4) *Order of reduction in force*. Permanent merit system covered employees in the approved reduction in force unit shall be placed on a list in descending order by class beginning with the employee having the highest total retention points in the class in the unit. Reduction in force selections shall be made from the list in inverse order regardless of full-time or part-time status. If two or more employees have the same combined total retention points, the order of reduction shall be determined by giving preference in the following sequence:

a. The employee with the highest total performance record points; and then, if still tied,

b. The employee with the lower last four digits of the social security number.

11.3(5) *Bumping (class change in lieu of layoff).* Employees who are affected by a reduction in force may, in lieu of layoff, elect to exercise bumping rights.

a. Employees who choose to exercise bumping rights must do so to a position in the applicable reduction in force unit. Bumping may be to a lower class in the same series or to a lower formerly held class (or its equivalent if the class has been retitled) in which the employee had nontemporary status while continuously employed in the state service. Bumping shall not be permitted to classes from which employees were voluntarily or disciplinarily demoted. Bumping by nonsupervisory employees shall be limited to positions in nonsupervisory classes. Bumping to classes that have been designated as collective bargaining exempt shall be limited to persons who occupy classes with that designation at the time of the reduction in force. Bumping shall be limited to positions covered by merit system provisions and positions covered by a collective bargaining agreement. The director may, at the request of the appointing authority, approve specific exemptions from the effects of bumping where special skills or abilities are required.

b. When bumping as set forth in paragraph *"a"* of this subrule, the employee shall indicate the class, but the appointing authority shall designate the specific position assignment within the reduction in force unit. The appointing authority may designate a vacant position if the department of management certifies that funds are available and after all applicable contract transfer and recall provisions have been exhausted. The appointing authority shall notify the employee in writing of the exact location of the position to which the employee will be assigned. After receipt of the notification the employee shall have five calendar days in which to notify the appointing authority in writing of the acceptance of the position or be laid off.

Bumping to another noncontract class in lieu of layoff shall be based on retention points regardless of full-time or part-time status and shall not occur if the result would be to cause the removal or reduction of an employee with more total retention points. If bumping occurs, the employee with the least total retention points in the class shall then be subject to reduction in force.

Bumping to another class in lieu of layoff from a class covered by a collective bargaining agreement to a class not covered by a collective bargaining agreement, or vice versa, shall only occur if the move can be accomplished in accordance with the reduction in force order (retention points or seniority date) governing the class into which the employee moves.

Pay upon bumping shall be in accordance with 581—subrule 4.5(1), paragraph *"i."*

11.3(6) *Recall.* Eligibility for recall shall be for one year following the date of the reduction in force or the medical release to return to work

a. The following employees or former employees are eligible to be recalled:

(1) Former employees who have been laid off.

(2) Employees who have bumped in lieu of layoff.

(3) Employees whose hours have been reduced.

(4) Former employees currently on long-term disability who have a medical release to return to work in a capacity other than the job previously held.

(5) Former employees whose long-term disability benefits have been terminated and who have a medical release to return to work.

(6) Former employees who were terminated for medically related reasons due to a job-related illness or injury and who have a medical release to return to work.

(7) Current employees who are unable to return to their former class because of a job-related illness or injury and who have a medical release to return to work.

The medical release referred to in subparagraphs (4), (5), (6) and (7) above must be obtained to be on recall lists on a class-by-class basis. Another medical release addressing the employee's ability to perform the essential functions of the specific position to which recalled must be obtained prior to the employee's actually starting work.

b. Current employees listed in subrule 11.3(6), paragraph *"a,"* subparagraphs (2) and (3), shall only be on the recall list for the class and layoff unit occupied at the time of the reduction in force.

c. Former employees covered in paragraph *"a,"* subparagraphs (1), (4) and (5), and current employees covered in paragraph "*a,*" subparagraph (5), may be on the recall list for the following classes and under the following conditions:

(1) Class (or equivalent if retitled) held at the time of the reduction in force or termination;

(2) Any lower classes (or equivalent if retitled) held prior to the reduction in force or termination, except classes from which voluntarily or disciplinarily demoted; and

(3) Other classes for which the employee qualifies that are at the same or lower pay grade in relation to the class from which laid off or terminated.

The following provisions shall govern recall:

1. The total number of classes for which the employee is eligible for recall, including the employee's layoff class and formerly held classes, shall not exceed 26.

2. Employees may not designate particular agencies to which they will or will not accept recall.

3. Nonsupervisory employees may select only classes for which qualified that are nonsupervisory.

4. Only employees in collective bargaining exempt classes at the time of layoff shall be eligible for recall to such classes.

5. Employees listed in subrule 11.3(6), paragraph *"a,"* subparagraphs (4) and (5), may be required to furnish copies of their notification of termination of long-term disability benefits or their medical release to return to work.

6. Recalled employees shall be required to serve a six-month probationary period during which time, if it is found that the employee is not able to perform the assigned duties satisfactorily, the employee may be terminated without right of appeal and the employee's original recall record restored to the recall list for the remainder of the one-year recall eligibility period.

7. Requests to change classes or conditions of recall availability must be submitted in writing to the department.

d. The following provisions shall apply to the issuance and use of recall certificates:

(1) Recall certificates shall be issued for merit system covered positions and contract-covered positions only.

(2) When one or more names are on the recall list for a class in which a vacancy exists, the agency must fill that vacancy with a former employee from that list If no one from a recall certificate is se-

lected, the agency shall justify that decision to the director before the position may be filled by other methods.

(3) The recall alternatives in (2) above must be exhausted before other eligible lists may be used to fill vacancies.

Former employees listed in subrule 11.3(6), paragraph *"a,"* subparagraphs (4) and (5), who have received a medical release to return to work, shall be considered and their medically related work restrictions shall be taken into account when determining the individual's ability to perform the essential functions of the position.

e. Recall shall be by class without regard to an employee's status at the time of layoff (full-time or part-time).

An employee may remain on the recall list for the same status as that held at the time of layoff after having declined recall to a position with a different status. However, the employee will be removed for the status declined.

f. One failure to accept appointment to a nontemporary position with the same status as that held prior to the reduction in force or termination for purposes of long-term disability or job-related illness or injury shall negate all further rights to recall.

g. An appointing authority may refuse to recall employees who do not possess the special skills or abilities required for a position, with the prior approval of the director.

h. Notice of recall shall be sent by certified mail, restricted delivery. Employees must respond to an offer of recall within five calendar days following the date the notice was received. A notice that is undeliverable to the most recent address of record will be considered a declination of recall. The declination of a recall offer shall be documented in writing by the appointing authority, with a copy to the director.

i. Vacation accrual and accrued sick leave of recalled employees shall be in accordance with 581—subrule 14.2(2), paragraph *"l,"* and 581—subrule 14.3(10), respectively.

j. An employee who bumps in lieu of layoff or has a work hours reduction, and subsequently leaves employment for any reason, shall be removed from the recall list.

k. Employees on the recall list who are reemployed other than by recall, and who subsequently leave state employment for any reason, shall be removed from the recall list. Employees who are recalled shall be removed from the recall list unless otherwise provided for in these rules.

l. Pay upon recall shall be in accordance with 581—subrule 4.5(1), paragraph *"e."*

11.3(7) Reduction in force shall not be used to avoid or circumvent the provisions or intent of Iowa Code chapter 19A, or these rules governing reclassification, disciplinary demotion, or discharge. Actions alleged to be in noncompliance with this rule may be appealed in accordance with 581—Chapter 12.

11.3(8) Employees covered by a collective bargaining agreement shall be governed by the terms of that contract for reduction in force purposes.

These rules are intended to implement Iowa Code section 19A.9.

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**Effective date of amendments to 7.3(1), 7.12(19A), 11.3(1)*"a,"* 11.3(2)*"d"* and *"e,"* 11.3(4), 11.3(5), 11.3(6)*"c"* and 11.3(6)*"l"* delayed 70 days by the Administrative Rules Review Committee at its meeting held May 13, 1992; delay lifted by the Committee at its meeting held June 10, 1992. See emergency adopted amendment to 11.3(6)*"c"* and *"d,"* 5/27/92 Iowa Administrative Bulletin, pages 2203 and 2204.